

## DEPARTMENT OF STATE REVENUE

04-20130277.LOF

**Letter of Findings Number: 04-20130277**  
**Sales Tax**  
**For Tax Periods January to September 2012**

**NOTICE:** [IC 6-8.1-3-3.5](#) and [IC 4-22-7-7](#) require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUES**

**I. Sales Tax –Retail Merchant's Collection Allowance.**

**Authority:** [IC 6-2.5-6-10](#).

Taxpayer protests the disallowance of the Retail Merchant's Collection Allowance.

**II. Negligence Penalty–Tax Administration.**

**Authority:** [IC 6-8.1-10-1](#); [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayer protests imposition of a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer, an out-of-state company, operates gasoline stations in Indiana. Taxpayer discovered that it had made an error in computing the amount of tax due to the Department. On or around December 10, 2012, Taxpayer amended the January through September 2012 Retail Sales Tax returns and paid the amount due. The Department recorded the amended returns and deposited the remittance. Thereafter the Department disallowed Taxpayer's collection allowance and assessed Taxpayer a ten percent penalty and interest. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. Further facts will be provided as necessary. This Letter of Findings results.

**I. Sales Tax –Retail Merchant's Collection Allowance.**

**DISCUSSION**

Taxpayer protests the disallowance of the Retail Merchant's Collection Allowance. The relevant statute is [IC 6-2.5-6-10\(a\)](#), which states:

(a) In order to compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax, every retail merchant, except a retail merchant referred to in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under [IC 6-2.5-7-5](#) or under this chapter, if timely remitted, a retail merchant's collection allowance.

Taxpayer amended the January through September 2012 Retail Sales Tax returns and paid the amount due on or around December 10, 2012. Taxpayer did not timely remit the state gross retail tax, as the amounts were due prior to December 2012.

**FINDING**

Taxpayer's protest is denied.

**II. Negligence Penalty–Tax Administration.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to timely remit sales tax to the Department. The Department also notes that under [IC 6-8.1-10-1\(e\)](#) interest cannot be waived.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [IC 6-8.1-10-2.1](#). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;

(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer contends that the error in submitting the correct remittance was due to a software glitch.

Specifically, Taxpayer stated,

"The retail accounting system was classifying the discounts as taxable when the discounts could either be taxable or non-taxable; therefore, the 'calculated' net taxable sales were lower than the 'collected' net sales for the sales tax calculation."

When Taxpayer discovered the error, it corrected the error by amending its returns and remitting the additional sales tax. Additionally, Taxpayer provided documentation that demonstrated that Taxpayer determined the cause for the miscalculations and fixed the error to ensure that the proper amount of sales tax is remitted on a going forward basis. Taxpayer has documented and verified that the error was due to a reasonable cause and it has taken proper action to prevent the same mistake from happening again. Taxpayer has made a strong case that the negligence penalty should be abated.

#### **FINDING**

Taxpayer's protest is sustained.

#### **SUMMARY**

Taxpayer's protest of the disallowance of the Retail Merchant's Collection Allowance is denied. Taxpayer's protest of the imposition of the ten percent negligence penalty is sustained.

*Posted: 03/26/2014 by Legislative Services Agency*

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